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C O N F I D E N T I A L SECTION 01 OF 03 GUATEMALA 000836

SIPDIS

DEPARTMENT FOR PM/B, L, T, P, D, IO, S/WCI, S/P, CWG/PM,
PM/AT, WHA, OSD/ISP/NP LOOK AND DOD/OGC ALLEN

E.O. 12958: DCL: 03/29/2013

TAGS: [PREL](#) [MOPS](#) [MARR](#) [KTIA](#) [GT](#) [KICC](#)

SUBJECT: GUATEMALAN COUNTERPROPOSAL FOR ARTICLE 98 AGREEMENT

REF: STATE 39114

CLASSIFIED BY: Robert E. Copley for reason 15. (b).

11. (U) This is an action request: see paragraph 3.

12. (C) Summary: The Guatemalan MFA has proposed an Article 98 Agreement that contains three additions to the modified text in reftel. The additions consist of making reference to UNSCR 1422 (the one-year exemption from the ICC for UN Peacekeepers), adding a requirement for each party to investigate and prosecute its own officials, and providing that the parties may cooperate with and provide evidence in investigations conducted by international tribunals, even against individuals protected from extradition by the agreement. Our unofficial English translation of the counterproposal is at paragraph 4. The Guatemalan proposal in Spanish is at paragraph 15. End Summary.

13. (C) Action Request: Post requests Department's review of the three additions proposed by Guatemala and an official U.S. response.

14. (C) Begin unofficial English translation: Agreement between the Government of the United States of America and the Government of Guatemala regarding the Surrender of Persons to International Tribunals

The Government of the United States of America and the Government of Guatemala, hereinafter "the Parties,"

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Considering that the Parties have each expressed their intention to, where appropriate, investigate and prosecute war crimes, crimes against humanity, and genocide alleged to have been committed by their respective officials, employees, military personnel, and nationals,

Taking into account Resolution 1422 (2002) issued on July 12, 2002, by the Security Council of the United Nations,

Hereby agree as follows:

11. For purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

12. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party,

(a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal is established by the UN Security Council, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to any international tribunal, unless such tribunal has been established by the UN Security Council.

13. Both Parties commit to investigate and, to prosecute, if appropriate, those presumed responsible, in the exercise of the internal jurisdiction of each of the Parties.

14. Nothing established in this Agreement will impede the Parties from collaborating in an investigation by any international tribunal or from providing such evidence as may be in its power, even if these were solicited within a process initiated against one of the "persons" referred to in this agreement.

15. When the United States extradites, surrenders, or otherwise transfers a person of the other Party to a third

country, the United States will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal is established by the UN Security Council absent the express consent of the Government of Guatemala.

16. When the Government of Guatemala extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Guatemala will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal is authorized or established by the UN Security Council, absent the express consent of the Government of the United States.

17. Each Party agrees, subject to its international legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to any international tribunal, unless such tribunal has been authorized or established by the UN Security Council.

This Agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. The present Agreement will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

Done at () on the () day of (), 2003.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF
GUATEMALA

End Unofficial English Translation.

15. (C) Begin Original Spanish text: ACUERDO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMERICA Y EL GOBIERNO DE LA REPUBLICA DE GUATEMALA RESPECTO A LA ENTREGA DE PERSONAS A LOS TRIBUNALES INTERNACIONALES

El Gobierno de los Estados Unidos de America y el Gobierno de la Republica de Guatemala, en lo sucesivo "las Partes",

Reafirmando la importancia de enjuiciar a los culpables de genocidio, delitos de lesa humanidad y crímenes de guerra,

Considerando que cada una de las Partes ha expresado su intencion de investigar y enjuiciar, cuando sea oportuno, los crímenes de guerra, delitos de lesa humanidad, y genocidio supuestamente cometidos por sus funcionarios, empleados, personal militar u otros nacionales respectivos,

Tomando en cuenta, la Resolucion 1422 (2002) emitida el 12 de julio de 2002 por el Consejo de Seguridad de las Naciones Unidas,

Por el presente, acuerdan lo siguiente:

1. A los efectos del presente acuerdo, por "personas", se entiende los funcionarios publicos, empleados (incluidos los contratistas), el personal militar o los nacionales de una Parte, actuales o antiguos,

2. Las personas de una Parte presentes en el territorio de la otra no seran, salvo con el consentimiento expreso de la primera Parte,

a) entregadas ni trasladadas por ningun medio a ningun tribunal internacional, para ningun proposito, a menos que tal corte sea establecida por el Consejo de Seguridad de la ONU, ni

b) entregadas ni trasladadas por ningun medio a ninguna entidad ni a un tercer pais, ni expulsadas a un tercer pais con el proposito de entregarlas o trasladarlas a ningun tribunal internacional, a menos que tal corte haya sido establecida por el Consejo de Seguridad de la ONU.

3. Ambas Partes se comprometen a investigar y, si ha lugar a la formacion de causa, enjuiciar a los presuntos responsables, en ejercicio de la jurisdiccion interna de cada una de las Partes.

4. Nada de lo establecido en el Acuerdo impedira que las Partes colaboren en la investigacion que realice cualquier tribunal internacional o que proporcionen las evidencias que se hallaren en su poder, aun si estas fueren solicitadas

dentro de un proceso iniciado en contra de alguna de las personas a que se refiere el presente Acuerdo.

15. Cuando los Estados Unidos extradite, entregue o, de otra forma, traslade a una persona de la otra Parte a un tercer país, los Estados Unidos no convendra en que el tercer país la entregue o traslade a ningún tribunal internacional, a menos que tal corte sea establecida por el Consejo de Seguridad de la ONU, salvo con el consentimiento expreso del Gobierno de Guatemala.

16. Cuando el Gobierno de Guatemala extradite, entregue o, de otra forma, traslade a una persona de los Estados Unidos de América a un tercer país, el Gobierno de Guatemala no convendra en entregarla ni trasladarla a ningún tribunal internacional, a menos que tal Corte sea autorizada o establecida por el Consejo de Seguridad de la ONU, salvo con el consentimiento expreso de Gobierno de los Estados Unidos.

17. De acuerdo a sus obligaciones jurídicas internacionales, cada Parte conviene en que, a sabiendas, no facilitar las gestiones de ningún tercer país o Parte, ni consentir o cooperar respecto a las mismas para que se extradite, entregue o traslade a una persona de la otra Parte a ningún tribunal internacional, a menos que tal corte haya sido autorizado o establecido por el Consejo de Seguridad de la ONU.

El presente acuerdo entrara en vigor mediante un canje de notas que confirmen que cada Parte ha cumplido con los requisitos legales nacionales necesarios para su entrada en vigor. El presente acuerdo permanecerá vigente hasta un año después de la fecha en que una de las Partes notifique a la otra su intención de derogarlo. Las disposiciones del presente acuerdo seguirán en vigor con respecto a todo acto que ocurra, o toda queja que surja, antes de la fecha de vigencia de la derogación.

Hecho en ____ el día ____ de 2003.

Por el Gobierno de los Estados Unidos de América

Por el Gobierno de la República de Guatemala

End Original Spanish Text.